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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,589	11/10/2003	William B. Rose	1201.68221	6235
24978	7590	10/17/2006	EXAMINER	
GREER, BURNS & CRAIN 300 S WACKER DR 25TH FLOOR CHICAGO, IL 60606			NGUYEN, CHI Q	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/705,589	<b>Applicant(s)</b> ROSE, WILLIAM B.	
	<b>Examiner</b> Chi Q. Nguyen	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) 55-64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-54 and 65-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's election without traverse of Group I (claims 1-54, and 65-68) in the reply filed on 8/30/2006 is acknowledged.

#### ***Claim Objections***

Claim 11 is objected to because of the following informalities: for clarification purposes, the applicant is advised to spell out "PVC". Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 8, 16-19, 21, and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,718,088 to Jacobsen.

Claims 1, 16, 17, 19, 21, 23, 24, 25, :

Jacobsen discloses in Fig. 1 a preformed unibody diverter for directing water away from a building foundation comprising a generally vertical section 10/15 having a first predetermined width; first 10 and second 15 portions of said generally vertical section disposed at an angle with respect to one another, an angled section 13 extending downwardly from said generally vertical section at an obtuse angle therewith and having a second predetermined width, wherein said angled section includes first

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and second portions disposed at an obtuse angle with respect to one another, and wherein said first predetermined width is larger than said second predetermined width.

Claims 2, 18:

Wherein said first and second portions 10/15 are disposed at a generally right angle (or 90-degrees) with respect to one another (Fig. 1).

Claim 8:

Wherein said vertical section has a predetermined thickness.

Claims 1, 2, 8, 11-19, 21-27, 33-35, 37-39, 44-46, 52-54, 65, and 67-68 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,178,369 to Syx.

Claims 1, 8, 16-19, 21-25, 54, 65, and 67-68:

Syx discloses in Fig. 6 a fence vegetation barrier 60 comprising a generally vertical section 62/64 disposed at an angle with respect to one another having a first predetermined width, an angled section 68 extending downwardly from said generally vertical section at an obtuse angle therewith and having a second predetermined width, wherein said angled section includes first 66 and second 68 portions disposed at an obtuse angle with respect to one another, and wherein said first predetermined width is larger than said second predetermined width and Fig. 11 shows vertical portion has an abutment angle of 180-degrees and four bodies around a house foundation structure.

Claim 2:

Wherein said first and second portions 62/64 are disposed at a generally right angle (or 90-degrees) with respect to one another (Fig. 5 and col. 4, lines 55-56).

Claim 11:

Wherein said vertical section comprises PVC (see abstract).

Claims 12-15, 33-34, 44, 45, 52, 53:

Wherein said vertical section includes an attachment system includes at least one fastener, bolt, or threaded fastener (see col. 4, lines 10-13).

Claims 26-27, 35, 37-39, 46:

Syx shows in Fig. 15 a preformed diverter system comprising a first, a second and a third diverter are installed around a house having a body includes a generally L-shaped and an angled portion that extends downwardly and away from the vertical portion (see Fig. 5).

Claims 65 and 66 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 6,199,326 to Mayle.

Mayle discloses in Figs. 1 and 4 a diverter 10 comprising a vertical portion 81/82 and an angled portion 83/84 that extends downwardly and away from the vertical portion 81/82 and further comprising a through-cut 86a/86b.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-7, and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,718,088 to Jacobsen.

Claims 3-7 and 9:

Jacobsen discloses the basic structures for the flashing as stated above but does not disclose that the vertical section has a width of approximately ten inches, angled section has width of approximately 30 inches, a ratio of the widths of said vertical section and said angled section is between approximately 1:1 and 1:10, the first and second portions of said vertical section have a predetermined length of approximately 24 inches, wherein said angled portion extends downwardly from said vertical portion at a grade of approximately 20%, and wherein said vertical section has a predetermined thickness of approximately 0.045 inches. However, these features would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made. Furthermore, applicant has not disclosed the criticality of these features.

Claims 10 and 11:

Jacobsen discloses the basic structures for the flashing as stated above but does not disclose that the angled portion comprises rubber and the vertical section comprises PVC. However, these features would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made. Furthermore, applicant has not disclosed the criticality of these features.

Claims 3-7, 9, 20, 28-32, 36, 40-43, and 47-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,178,369 to Syx.

Syx discloses the basic structures for the flashing as stated above but does not disclose that the vertical section has a width of approximately ten inches, angled section has width of approximately 30 inches, a ratio of the widths of said vertical section and

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said angled section is between approximately 1:1 and 1:10, the first and second portions of said vertical section have a predetermined length of approximately 24 (claim 32), 27 (claim 43), 44 (claim 51) inches, wherein said angled portion extends downwardly from said vertical portion at a grade of approximately 20%, and wherein said vertical section has a predetermined thickness of approximately 0.045 inches. However, these features would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made. Furthermore, applicant has not disclosed the criticality of these features.

Syx discloses the basic structures for the flashing as stated above but does not disclose that the vertical portion has an abutment angle of approximately 270-degrees. However, this feature would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made. Furthermore, applicant has not disclosed the criticality of this feature.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847. The examiner can normally be reached on Monday-Friday from 7:30 am-4:00 pm.

If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached at (571) 272-6848.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairdirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at (866) 217-9197.

*en*  
CQN

10/11/2006



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